

RECEIVED
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
2007 MAR 21 P 6:35 NORTHERN DIVISION

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA
PAMELLA B. WILSON and
CURTIS WILSON,

Plaintiffs,

v.

SCOTT HEATH RICE,

Defendant.

Case No.: 2:07CV 243 - wha

NOTICE OF REMOVAL

COMES NOW the Defendant, SCOTT HEATH RICE, and pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, hereby removes this cause from the Circuit Court of Montgomery County, Alabama, wherein it is now pending, to the United States District Court for the Middle District of Alabama, Northern Division, and shows unto this Court as follows:

REMOVAL PROCEDURE

1. Plaintiffs, Pamella B. Wilson and Curtis Wilson, instituted this action on or about February 9, 2007, by filing a Complaint in the Circuit Court of Montgomery County, Alabama. A copy of all pleadings and process filed with the Montgomery County Circuit Court in this action has been attached hereto as Exhibit "A."

2. Service of the Summons and Complaint was improperly attempted on Defendant at 3329 Durford Cove, Memphis, Tennessee, 38128, which was not his residence at the time the Summons and Complaint were filed nor when service was attempted.

3. Defendant first received notice of the Complaint on February 19, 2007, when his insurance agent provided him with a copy.

4. This Notice of Removal is therefore timely filed pursuant to 28 U.S.C. § 1446(b).

5. A copy of this notice of removal has been filed this day with the Clerk of the Circuit Court of Montgomery County, Alabama, as provided by law, and is being served upon all counsel of record. A copy of the Notice to the Clerk of the Circuit Court of Montgomery County is attached hereto as Exhibit "B."

6. By filing this Notice of Removal, Defendant is not to be construed as having accepted or waived objection to Plaintiff's improper service of process. Defendant expressly reserves the right to later plead or contend insufficiency of process and/or insufficiency of service of process, in addition to his other pleadings and defenses.

PARTIES

7. Plaintiffs state in their Complaint that they are resident citizens of Autauga County, Alabama. (See Complaint, ¶¶ 1-2.)

8. Defendant is alleged in the Complaint to be a resident citizen of the State of Tennessee (See Complaint, ¶ 2).

9. Defendant actually resides in Zellwood, Florida, and is therefore a citizen of the State of Florida, for diversity purposes.

PLAINTIFFS' CAUSES OF ACTION

10. As set forth in the Complaint, Plaintiffs have alleged claims of negligence (Count One) and wantonness or recklessness (Count Two) against Defendant, arising out of an automobile

accident that took place on or about June 23, 2005, on Eastern Boulevard in Montgomery County, Alabama. (Complaint, ¶¶ 4-10).

11. Plaintiff Pamella B. Wilson alleges that she has suffered “severe and permanent injuries,” including “severe pain and suffering” and that she has “sustained numerous injuries over her body, and has experienced and continues to experience mental anguish, physical and emotional suffering, and has suffered permanent injury to her neck and back and incurred medical expenses and will continue to do so in the future.” (Complaint, ¶¶ 5, 9).

12. Plaintiff Curtis Wilson alleges that he has “lost the services and companionship of his wife for an extended period of time” and that he “incurred medical expenses and will continue to do so in the future.” (Complaint, ¶¶ 6, 10).

13. Based on these alleged harms, Plaintiffs allege actual and consequential damages (Complaint, ¶¶ 6, 10), as well as punitive damages (Complaint, ¶ 10), in an unspecified amount.

DIVERSITY JURISDICTION

14. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332.

15. This action is removable to this Court pursuant to 28 U.S.C. § 1441(a).

16. As demonstrated in paragraphs 7-9 above, there is complete diversity of citizenship between all parties to this action. (See ¶¶ 7-9 above).

17. As indicated by the extensive damages alleged Complaint and the medical information available to this Defendant, Plaintiff Pamella B. Wilson has significant neck and back issues for which she has sought and received medical treatment on numerous occasions. She has

seen multiple physicians including a neurologist; has undergone numerous tests, imaging studies and epidural injections; and has been recommended for a neurosurgical evaluation.

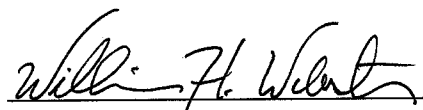
18. Furthermore, Defendant's limit of liability on his policy of automobile insurance is \$100,000, for an accident of the type alleged in the Complaint, and this information has been shared with Plaintiffs' attorney.

19. Therefore, based on the Complaint and the medical treatment known to this Defendant, as well as Defendant's automobile policy limits and the amount customarily demanded and received for such injuries, Defendant reasonably anticipates that Plaintiff's amount in controversy for purposes of diversity jurisdiction will exceed \$75,000, exclusive of interest and costs.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant Scott Rice Heath requests that this Court consider this notice as provided by law governing the removal of cases to this Court; that this Court will make the proper orders to achieve the removal of this cause from the Circuit Court of Montgomery County, Alabama, to this Court; and that this Court will make such other orders as may be appropriate to effect the preparation and filing of a true record in this cause of all proceedings that may have been had in the Circuit Court of Montgomery County, Alabama.

Respectfully submitted this 21st day of March, 2007.



William H. Webster (ASB-2833-B43W)
Michael L. White (ASB-4263-W86M)

OF COUNSEL:

OF COUNSEL:

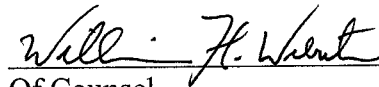
WEBSTER, HENRY, LYONS & WHITE, P.C.
Post Office Box 239
Montgomery, AL 36101-0239

Tel: (334) 264-9472
Fax: (334) 264-9599


CERTIFICATE OF SERVICE

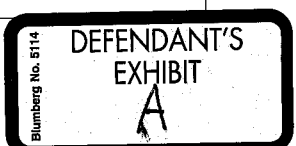
I hereby certify that the foregoing document has been duly served upon the below named by electronic filing and by placing a copy thereof in the United States Mail, postage prepaid, and properly addressed on this the 21st day of March, 2007.

BOB E. ALLEN, Esq.
Attorney at Law
P.O. Drawer 908
Millbrook, AL 36054



Of Counsel

State of Alabama Unified Judicial System Form C-34 Rev. 6/88	SUMMONS -CIVIL-	Case Number CV. 07-204
IN THE _____ CIRCUIT _____ COURT OF _____ MONTGOMERY _____ COUNTY		
Plaintiff PAMELLA B. WILSON and CURTIS WILSON v. Defendant SCOTT HEATH RICE		
NOTICE TO SCOTT HEATH RICE, 3329 Durford Cove, Memphis Tennessee 38128		
THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY _____ BOB E. ALLEN _____, WHOSE ADDRESS IS _____ P.O. Box 908, Millbrook, AL 36054		
THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN <u>30</u> DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.		
TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE Alabama Rules of Civil Procedure:		
<input type="checkbox"/> You are hereby commanded to serve this summons and a copy of the complaint in this action upon the Defendant.		
<input checked="" type="checkbox"/> Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of Civil Procedure. Date <u>02/06/07</u> <u>M. Delina Pittman</u> By: _____ Clerk/Register		
<input checked="" type="checkbox"/> Certified Mail is hereby requested. <div style="text-align: center; margin-top: 20px;"> _____ Plaintiff/Attorney's Signature</div>		
RETURN ON SERVICE:		
<input type="checkbox"/> Return receipt of certified mail received in this office on _____ (Date)		
<input type="checkbox"/> I certify that I personally delivered a copy of the Summons and complaint to _____ in _____ County, Alabama on _____ (Date)		
Date _____		Server's Signature _____
Address of Server _____		Type of Process Server _____



IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2007 FEB -1 PM 2:03

PAMELLA B. WILSON
and CURTIS WILSON

Plaintiffs,

vs.

SCOTT HEATH RICE

Defendant.

CASE NO. CV- 07-204

PARTIES

1. Plaintiff, PAMELLA B. WILSON, is over the age of nineteen years and is a resident citizen of Autauga County, Alabama.
2. Plaintiff, CURTIS WILSON, husband of Plaintiff PAMELLA B. WILSON, is over the age of nineteen years and is a resident citizen of Autauga County, Alabama.
3. Defendant, SCOTT HEATH RICE, is over the age of nineteen years and is a resident citizen of Memphis, Tennessee, residing at 3329 Durford Cove, Memphis Tennessee 38128.

COUNT I
(Negligence)

4. On or about June 23, 2005, Defendant, Scott Heath Rice, so negligently operated his vehicle on the Eastern Blvd., at the intersection of Monticello Drive and Shirley Lane, Montgomery County, Alabama, as to cause a collision with the automobile which the Plaintiff, PAMELLA B. WILSON, was driving.
5. As a direct and proximate consequence of the negligence of the Defendant, Scott Heath Rice, Plaintiff, PAMELLA B. WILSON, suffered severe and permanent injuries. She has suffered severe pain and suffering; sustained numerous injuries over her body, and has experienced and continues to experience mental anguish, physical and emotional suffering, and has suffered permanent injury to her neck and back and incurred medical expenses and will continue to do so in the future.
6. As a direct and proximate consequence of the negligence of the Defendant, Scott Heath Rice, Plaintiff, CURTIS WILSON, lost the services and companionship of his wife for an extended period of time. He also incurred medical expenses and will continue to do so in the future for the treatment of his wife's injuries.

WHEREFORE, Plaintiffs demand actual and consequential damages in an amount to be determined by at trial, and costs of this action.

COUNT II
(Wantonness and Recklessness)

7. Plaintiffs adopt each and every material averment of Count One as if fully set out herein.

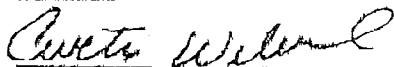
8. On or about June 23, 2005, Defendant, **Scott Heath Rice**, so wantonly and/or recklessly operated his vehicle on the Eastern Blvd., at the intersection of Monticello Drive and Shirley Lane, Montgomery County, Alabama, as to cause a collision with the automobile which the Plaintiff, **Pamella B. Wilson**, was driving.

9. As a direct and proximate consequence of the wantonness and/or recklessness of the Defendant, **Scott Heath Rice**, Plaintiff, **Pamella B. Wilson**, suffered severe and permanent injuries. She has suffered severed pain, sustained numerous injuries over her body, and has experienced and continues to experience mental anguish, physical and emotional suffering, and suffered permanent injury to her neck and back and has incurred medical expenses and will continue to do so in the future.

10. As a direct and proximate consequence of the wantonness and/or recklessness of the Defendant, **Scott Heath Rice**, Plaintiff, **Curtis Wilson**, lost the services and companionship of his wife. He also incurred medical expenses and will continue to do so in the future for the treatment of his wife's injuries.

WHEREFORE, Plaintiffs demand actual and consequential damages in an amount to be determined at trial, punitive damages and costs of this action.


PAMELLA B. WILSON
Plaintiff


CURTIS WILSON
Plaintiff


ROB E. ALLEN (ALL020)
Attorney for Plaintiffs

OF COUNSEL:

BOB E. ALLEN
Attorney at Law
P.O. Drawer 908
Millbrook, AL 36054
334-285-0990

JURY DEMAND

PLAINTIFFS HEREIN DEMAND A TRIAL BY JURY ON ALL ISSUES IN THIS CAUSE.



OF COUNSEL

SERVE DEFENDANT:

Scott Heath Rice
3329 Durford Wood Cove
Memphis, TN 38128

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

PAMELLA B. WILSON and
CURTIS WILSON,

Plaintiffs,

v.

SCOTT HEATH RICE,

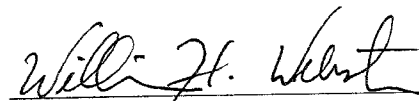
Defendant.

Case No.: CV-07-204

NOTICE OF FILING NOTICE OF REMOVAL

COMES NOW the Defendant, Scott Heath Rice, and hereby gives notice to the Clerk of Court of Montgomery County, Alabama, and the parties hereto that said Defendant has removed this case to the United States District Court for the Middle District of Alabama, Northern Division. The contents of the Notice of Removal, a copy of which is made an exhibit hereto, are hereby adopted and reincorporated as if fully set forth herein.

Respectfully submitted this the 21st day of March, 2007.



William H. Webster (WEB030)

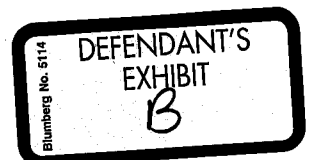
Michael L. White (WHI095)

OF COUNSEL:

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Post Office Box 239
Montgomery, AL 36101-0239

Tel: (334) 264-9472

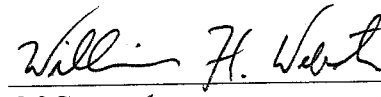
Fax: (334) 264-9599



CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been duly served upon the below named by placing a copy thereof in the United States Mail, postage prepaid, and properly addressed on this the 21st day of March, 2007.

BOB E. ALLEN, Esq.
Attorney at Law
P.O. Drawer 908
Millbrook, AL 36054



Of Counsel